IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 23334 of 1999

Between:

M/s. Maruthi Industries, Timber Merchants,
Tufan Nagar Road, Near Railway Station (Western Side),
Kavali, Nellore District.

..... PETITIONER

AND

1 The Divisional Railway Manager,(Works Branch),
South Central Railway, Vijayawada.
2 The Senior Divisional Engineer,South Central Railway, (Works Branch),
Vijayawada.
3 The Estate Officer,
South Central Railway, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction declaring the proceedings No.B/W/277/2/19/Land dt.25.3.98 as arbitrary, illegal and oppressive and directing the respondents 1 and 2 to fix the market value of the land in Sy.No.2001 in Kavali Bit II Village, Kavali, Nellore district as per the Valuation Report dt.16.1.1998 of the Sub Registrar, Kavali and consequently direct them to re-determine the arrears of licence fee payable by the petitioner as per the said Valuation Report.

Counsel for the Petitioner: MR.T.S.ANAND

Counsel for the Respondents: MR.GOURI SHANKAR SANGHI, Standing Counsel for Railways

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23334 OF 1999

-

ORDER:

The petitioner impugnes the proceedings of the first respondent dated 25.03.1998, whereby and whereunder the petitioner was asked to remit a sum of Rs.1,52,129/- (Rupees one lakh fifty two thousand one hundred and twenty nine only) towards revised licence fee with effect from 01.04.1986, failing which action would be taken for forfeiture of security deposit and initiate proceedings for evicting the petitioner from railway land. The petitioner also seeks a direction to respondents 1 and 2 to fix the market value of the land in Survey No.2001 as per valuation report dated 16.01.1998 of the Sub Registrar, Kavali and redetermine the arrears of licence fee payable by the petitioner.

The petitioner obtained licence for use of the railway Poramboke site admeasuring 1,845 square meters in Survey No.2001 of Kavali Bit II village with permission to erect a temporary shed for running a saw mill in the name and style of M/s.Maruthi Industries Timber Merchants. As per the terms of licence deed, the petitioner has to pay licence fee at 6 per cent of the market value of the land subject to revision every five years. To start with, the petitioner was required to pay a sum of Rs.616.40 (Rupees six hundred sixteen and paise forty only) in the year 1974-75, which was revised from time to time. By impugned proceedings, the petitioner was informed that revision of licence was conducted basing on the market value of the land as on 01.01.1985 and the value was fixed with effect from 01.04.1986 @ Rs.7 ½ per cent of the market value. The petitioner contends that Assistant Engineer, South Central Railway, Ongole made enquiries about the valuation of the land from Sub Registrar, Kavali, who informed the Assistant Engineer that the market value of the land in Survey No.2001 relating to Kavali Bit II village is Rs.600/- (Rupees six hundred only)

per acre in the year 1985, Rs.1,000/- (Rupees one thousand only) per acre in 1987 and Rs.10,500/- (Rupees ten thousand five hundred only) per acre in 1998. The petitioner made a representation on 27.07.1999 requesting the respondents to calculate licence fee as per the valuation report of the Sub Registrar, Kavali. Second respondent by a letter dated 19.08.1999 informed the petitioner that the rate of licence fee is increased notionally every year on the first April starting from 01.04.1986 @ 10 per cent over the rate of previous year's value. The petitioner allegedly made another representation to Railway Ministry requesting to direct the respondents 1 and 2 to reconsider his case, in vain. But respondents initiated proceedings under Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980 (the Act, for brevity) and issued show cause notice under Section 4(1) of the Act on 31.10.1999. Therefore, the petitioner filed the present writ petition.

Second respondent filed counter affidavit on behalf of the respondents opposing the writ petition alleging that the petitioner has not come to the Court with clean hands and that he has suppressed the truth and correct facts. It is stated that in response to the impugned demand notice, the petitioner admitted the liability and paid an amount of Rs.5,000/- (Rupees five thousand only) as part payment. He has also addressed a letter on 13.07.1998 requesting for permission to pay the balance amount within six months in instalments basis. The petitioner paid further sum of Rs.10,000/- (Rupees ten thousand only) on 31.10.1998. The petitioner thereafter addressed a letter dated 11.03.1999 agreeing to pay an amount of Rs.50,000/- (Rupees fifty thousand only) before the end of March, 1999 and requested the respondents not to take any legal action.

It is further stated in the counter affidavit that the petitioner filed writ petition being W.P.NO.24402 of 1996 challenging the proceedings dated 28.05.1996 by which licence fee was enhanced. The said writ petition was dismissed on 20.11.1996 observing that the petitioner has to avail remedy in Civil Court. The said order has become final. In another similar case, a Division Bench of this Court in Writ Appeal No.113 of 1999 dated 08.02.1999 dismissed the case of the licensee, challenging enhancement of licence fee. As per the policy of the railways and as per the terms and conditions of licence, the licence fee has to be revised once in five years on the basis of the value of the surrounding lands. The land, which is in occupation of the petitioner, is in the heart of commercial area adjoining Kavali Railway Station, where commercial operations are being carried on and therefore the licence fee is revised with effect from 01.04.1986, which the petitioner has accepted and made part payments.

The petitioner contends that the action of the respondents in revising the licence fee abnormally is arbitrary and illegal. According to petitioner, the market value as determined by the Sub Registrar, Kavali must be the basis for fixing the licence fee. **Per contra**, the learned Standing Counsel for Railways Sri Gouri Shanker Sanghi contends that the petitioner challenged the proceedings in earlier writ petition, which was dismissed. Further, after receiving impugned notice, the petitioner made part payment and sought time for paying the balance. Therefore, he has estopped raising any objections with regard to enhancement.

The first respondent herein issued proceedings dated 28.05.1996 calling upon the petitioner to remit a sum of Rs.2,80,689/- (Rupees two lakh eighty thousand six hundred and eighty nine only) towards arrears of licence fee for the period from 1982 to 1995 and a further sum of Rs.36,190/- (Rupees thirty six thousand one hundred ninety only) towards licence fee from 01.01.1996 to 31.12.1996. The same was challenged in W.P.No.24402 of 1996. This Court dismissed the writ petition holding that the dispute between the petitioner and the railways is purely contractual nature and therefore the writ petition is not maintainable. The relevant observations made by this Court are as follows.

The contract between the parties which for the purpose of these proceedings is presumed to be as contended by the learned counsel for the petitioner relatable to the letter of Respondent – Railway dated 11.10.1974. The said contract is in the realm of private law. It is not a statutory contract. It is accordingly governed by the provisions of Contract Act or may be also by certain provisions of the Transfer of Property Act. Even though the respondent No.1 is a State within the meaning of Article 12 of the Constitution of India, such disputes relating to interpretation of the terms and conditions of such a contract cannot be agitated in a Writ Petition. That is a matter entirely for Civil Court where the claims of the petitioner can be appropriately considered based upon the evidence oral as well as documentary. Whether the amount claimed by Respondent No.1 is due from the petitioner or the firm of M/s.Maruthi Industries of which the petitioner is a partner under the said Contract and if so what is the correct amount that can be claimed by Respondent No.1 are matters which can be best adjudicated upon in a properly constituted suit before a Civil Court and not in a Writ Petition under Article 226 of the Constitution of India. The determination of the market value of the land for ascertaining the licence fee payable in respect of the land and the interpretation of the terms of the contract in relation thereto are matters which need to be established by adducing evidence either documentary or oral and it is only after establishing such jurisdictional facts that any relief to which the petitioner claims to be entitled to, can be granted. No question of law really arises for consideration for adjudication in the above Writ Petition.

The writ petition is not maintainable, in view of the decision of this Court between the same parties.

Secondly, after receiving impugned notice the petitioner addressed a letter on 13.07.1998 to second respondent informing that he is remitting a sum of Rs.5,000/- (Rupees five thousand only) and that he would pay the remaining balance within six months in instalments basis. Again the petitioner paid an amount of Rs.10,000/- (Rupees ten thousand only) to Section Engineer, P.Way, S.C.Railway, Kavali and the same was reported by the said Officer to Assistant Engineer. The petitioner again addressed a letter to the first respondent to the effect that he is paying not only an amount of Rs.5,000/- (Rupees five thousand only) but also he would pay another Rs.50,000/- (Rupees fifty thousand only) by the end of March, 1999. This shows that the petitioner accepted the revision and paid part payment and therefore he cannot turn around and challenge the revision of licence fee. Further even according to petitioner action was initiated under the provisions of the Act and a notice under Section 4(1) of the Act was issued. He did not submit any explanation and straightaway approached this Court to stall the proceedings under the statute. The petitioner has also suppressed the factum of filing earlier writ petition and for this reason also he is not entitled for any relief. It is well settled that ordinarily, this Court would not exercise its discretion in favour of a person, who suppresses the facts and approaches this Court with unclean hands.

The writ petition is devoid of merits and is accordingly dismissed.

_____

(V.V.S.RAO,J)

23.09.2004.

pln

To

1. The Divisional Railway Manager (Works Branch), South Central Railway, Vijayawada.

2. The Senior Divisional Engineer, South Central Railway (Works Branch), Vijayawada.

3. The Estate Officer, S.C.Railway, Vijayawada.

4. 2 CD copies.